UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STEPHANE J. WANTOU SIANTOU,
    Plaintiff,

    v.   CIVIL ACTION NO.
                                         12-40043-TSH

JANET NAPOLITANO,
Secretary of the Department of
Homeland Security,
ALEJANDRO MAYORKAS,
Director of U.S. Citizenship &
Immigration Services,
DENIS RIORDAN,
District Director of the U.S.
Citizenship & Immigration Services
for Boston, Massachusetts, and
ERIC HOLDER,
Attorney General of the
United States,
    Defendants.

REPORT AND RECOMMENDATION RE:
DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM
(DOCKET ENTRY # 11) AND DEFENDANTS' MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER JURISDICTION
(DOCKET ENTRY # 13)

November 20, 2012

BOWLER, U.S.M.J.

Pending before this court are defendants' motions to

dismiss for lack of subject matter jurisdiction and for failure

to state a claim pursuant to Rules 12(b)(1) and 12(b)(6) of the

Federal Rules of Civil Procedure, respectively. (Docket Entry

11 & 13). Defendants Janet Napolitano, Secretary of the

Department of Homeland Security; Alejandro Mayorkas, Director of

U.S. Citizenship & Immigration Services; Denis Riordan, District

Director of the U.S. Citizenship & Immigration Services for

Boston, Massachusetts; and Eric Holder, Attorney General of the

United States ("defendants") filed the motions. Defendants seek

dismissal of plaintiff Stephane J. Wantou Siantou's

("plaintiff") complaint seeking that his naturalization

application be expeditiously adjudicated. (Docket Entry # 2).

Defendants' motions, referred to this court for a report and

recommendation, are therefore ripe for review.

<div align="center">BACKGROUND</div>

Plaintiff submitted an application for naturalization on

November 11, 2011, to the United States Citizenship and

Immigration Services ("USCIS"). (Docket Entry # 4). Having not

received a confirmation of delivery, plaintiff stopped payment

of the check submitted in conjunction with his first application

and submitted a second application on November 21, 2011.

(Docket Entry # 4). USCIS received the first application on

November 21 and the second on November 23, 2011. (Docket Entry

12). USCIS notified plaintiff that his first application

would be placed on hold until payment was received and then

mistakenly sent plaintiff a notice stating that the second

application would also be placed on hold due to the stopped

payment. (Docket Entry # 4). In relation to the second

<div align="center">2</div>

application, plaintiff received a notice dated December 28,

2011, to have his biometrics[1] taken, which he did on January 13,

2012. (Docket Entry ## 4 & 4-1). Later, USCIS scheduled and

plaintiff attended an examination interview on June 21, 2012.

(Docket Entry # 10).

On April 9 and 16, 2012 (before the interview took place),

plaintiff filed a complaint and an amended complaint seeking, in

essence, that the court compel USCIS to "properly and

immediately adjudicate [his naturalization] application" and

declare that defendants' actions were illegal, arbitrary and

capricious and an abuse of discretion. (Docket Entry ## 1 & 4).[2]

In response, on July 6, 2012, defendants filed the motion to

dismiss for failure to state a claim under Rule 12(b)(6), Fed.

R. Civ. P. ("Rule 12(b)(6)"). (Docket Entry # 11).

On July 13, 2012, a few days after defendants filed the

Rule 12(b)(6) motion to dismiss, plaintiff submitted and the

USCIS accepted a request to withdraw the two pending

naturalization applications. (Docket Entry # 14). On July 31,

2012, defendants filed the motion to dismiss for lack of subject

matter jurisdiction under Rule 12(b)(1), Fed. R. Civ. P. ("Rule

12(b)(1)"). As of the date of the declaration of the USICS

---

[1]   Biometrics consist of the electronic capture of an applicant's photograph, signature and fingerprints.

[2]   Plaintiff's original complaint did not contain any cause of action or request for relief. (Docket Entry # 1).

Field Office Director of Lawrence, Massachusetts, July 25, 2012,

plaintiff had no other naturalization applications pending

before USCIS. (Docket Entry # 14-1).

<div align="center">DISCUSSION</div>

"When faced with motions to dismiss under both 12(b)(1) and

12(b)(6), a district court, absent good reason to do otherwise,

should ordinarily decide the 12(b)(1) motion first." Katz v.

Pershing, LLC., 806 F.Supp.2d 452, 456 (D.Mass. 2008). This

court therefore initially turns to the Rule 12(b)(1) motion to

dismiss for lack of subject matter jurisdiction.

In a federal court, justiciability requires the existence

of an actual case or controversy. U.S. Const. art. III, § 2,

cl. 1. "Even if an actual case or controversy exists at the

inception of litigation, a case may be rendered moot (and,

therefore, subject to dismissal) if changed circumstances

eliminate any possibility of effectual relief." Maine Sch.

Admin. Dist. No. 35 v. Mr. R., 321 F.3d 9, 17 (1st Cir. 2003).

Defendants argue that the complaint is moot because

plaintiff has withdrawn his two naturalization applications.[3]

The delay in plaintiff's naturalization applications was the

main reason for which plaintiff had brought suit and sought

relief. Given that the subject of this suit has been resolved

---

[3] Plaintiff did not file a response or opposition to
defendants' Rule 12(b)(1) and Rule 12(b)(6) motions to dismiss.

by plaintiff's withdrawal of both naturalization applications,
there is no controversy to which this court could provide
relief.   The complaint is therefore rendered moot.

<div align="center">CONCLUSION</div>

In accordance with the foregoing discussion, this court
RECOMMENDS[4] that the motion to dismiss for lack of subject matter
jurisdiction (Docket Entry # 13) be **ALLOWED** and motion to
dismiss for failure to state a claim (Docket Entry # 11) be
DENIED as moot.

                              /s/ Marianne B. Bowler
                              MARIANNE B. BOWLER
                              United States Magistrate Judge

---

[4]   Any objection to this Report and Recommendation must be
filed with the Clerk of Court within 14 days of receipt of the
Report and Recommendation to which objection is made and the
basis for such objection. See Rule 72(b), Fed. R. Civ. P. Any
party may respond to another party's objection within 14 days
after service of the objections. Failure to file objections
within the specified time waives the right to appeal the order.